No. 94-1390

(4)

Supreme Court U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term 1994

LAWRENCE A. WILLIAMS, MANSION W. CLARK, and DONALD F. MERRIWEATHER,

Petitioners,

v.

KARL NAGEL and STEVEN W. BARRICK, doing business as CHAMPAIGN HOUSING ASSOCIATES, a partnership doing business as PARKSIDE AND MANSARD SQUARE APARTMENTS; STEVEN W. BARRICK AND ASSOCIATES; THE NAGEL GROUP, INC. an Illinois Corporation; and THE CITY OF CHAMPAIGN, a Municipality, DONALD HANNA , and DON CARTER,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

PETITIONERS' REPLY BRIEF

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ARGUMENT

I. STANDING ARGUMENTS PRESENTED HAVE NO MERIT.

At page 11 of the Respondent Nagel Group's brief, the assertion appears that Petitioners' should have divined the sua sponte, surprise holding of the Supreme Court of Illinois that criminal trespass exemption per § 21-3(c), 720 ILCS is unavailable to guests of tenants under rules reserving landlord barment authority while still in the Appellate Court for the Fourth District, which held that § 21-3(c) was strictly limited to the guests of migrant workers only; that Petitioners then and there were obligated to advance the constitutional arguments stated in their Petition for Rehearing to the Supreme Court of Illinois, asserting, "...the Appellate Court's construction of the statute, *although slightly different,* had the same effect as that of the Illinois Supreme Court: the tenant invitations give them no right to enter Parkside." Id (emphasis added). This is a major misleading argument. The holding was *totally* different with no room nor necessity for the constitutional arguments brought to the attention of the Supreme Court of Illinois in the denied Petition for Rehearing. The Fourth District, not *adding* language, held: "Section 21-3(c) of the Criminal Code was intended by the legislature to address the plight of migrant workers or persons similarly situated; that subsection has nothing to do with the circumstances of this case and constitutes no defense to the charge of criminal trespass to land except in the limited circumstances involving migrant workers." Pet. App. 25. At this point, constitutional argument based on Lanzetta v New Jersey, 306 U.S. 451. 56 S. Ct. 618, 83 L. Ed. 888 (1939) would have been frivolous. Then, the guest exemption provision was "narrow and precise", Bouie v. Columbia, 378 U.S. 347, 352. 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964) in stating sanction from trespass arrest on invitation of tenants, not at all constitutionally vague, with the Fourth District's strained and singular interpretation contradicting established

case law then cited, Karow v. Student Inns, Inc., 43 Ill. App. 3d 878, 357 N.E.. 2d 682, 1 Ill. Dec. 515 (4th Dist., 1976), People v. Flanagan, 133 Ill. App. 3d 1, 478 N.E. 2d 666, 88 Ill. Dec. 351 (4th Dist., 1985), City of Quincy v. Daniels, 615 N.E. 2d 839, 186 Ill. Dec. 35 (4th Dist., 1993), People v. Rynberk, 92 Ill. App. 3d 112, 415 N.E. 2d 1087, 47 Ill. Dec. 774 1st Dist., 1980), People v. Evans, 163 Ill. App. 3d 561, 516 N.E. 2d 817, 114 Ill. Dec. 662 (1st Dist., 1987) and at odds with ordinary principles of statutory construction, such as "plain and ordinary meaning", People ex Rel Ryan v. Villa Park, 212 Ill. App. 3d 187, 570 N.E. 2d 882, 156 Ill. Dec. 406, 409 (2d Dist., 1991) or reading a statute as a whole so that meaning is given each word, clause or sentence, leaving nothing superfluous. Morris v. Broadview, 385 Ill. 228, 52 N.E. 2d 769 (1944). (Id.). It is disingenuous to assert that constitutional, due process vagueness claims could then have been fashioned and to suggest that "Illinois courts ordinarily do not consider issues raised for the first time on rehearing... and there is no indication that the Illinois Supreme Court did so here...", Respondent Nagel Group's brief, 11 (citation omitted), when the arguments in the denied Petition for Rehearing were triggered *solely* on the basis of the Illinois Supreme Court's surprise ruling that had no precedent, was not mentioned by any courts below it and was not briefed by any of the parties at any stage of the case. The *only* points in this litigation where the constitutional arguments as to the criminal trespass exemption provision could be raised would be in the denied Petition for Rehearing and in this Petition, after the Supreme Court of Illinois had *added* constitutionally defective elements to 21-3(c). Cf. Hathorn v. Lovorn, 457 U.S. 255, 102 S. Ct. 2421, 72 L. Ed. 2d 824 (1982), Banker's life & Casualty Co.. v. Crenshaw, 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988). The citations of Respondent Nagel Group to this Court of Cardianale v. Louisiana, 394 U.S. 437, 89 S. Ct. 1162, 22 L. Ed. 2d 398 (1969) and Radio Station WOW v. Johnson, 326 U.S. 120, 89 L. Ed. 2d 2092 (1945) serve only to mislead: In Cardinale, "the sole federal question argued...had *never* been raised, preserved, or passed upon by in the state courts below." 394 U.S. at 438 (emphasis

added); in Radio Station WOW, the petitioners had raised a jurisdictional issue for the first time in a petition for rehearing, denied by the Nebraska Supreme Court because the petitioners there had *previously* pleaded that issue in the trial court directly contrary to the position they took in their petition for rehearing, a scenario totally different from this case where the federal questions arose solely as a result of an unforeseen ruling Supreme Court of Illinois. Further, the burdensome citations to the irrelevant, tax protest litigation of Schlenz v. Castle, 115 Ill. 2d 135, 503 N.E. 2d 241, 104 Ill. Dec. 684 (1986) ("This action represents the latest salvo in a war which plaintiffs' counsel, Paul Hamer, has waged against revenue officials in this State over more than two decades." 115 Ill. 2d at 138 (citations omitted)) and at 132 Ill. App. 993, 477 N.E. 2d 697, 81 Ill. Dec. 571 (2d Dist., 1985) is inappropriate, having nothing to do with a petition for rehearing directed at an appellate court's surprise ruling adding constitutionally defective language to an otherwise sound criminal statute. The case concerned, inter alia, simple Hornbook law of "(p)arties cannot for the first time on petition for rehearing raise questions which were not urged or argued on appeal." 132 Ill. App. 3d at 1018. More red herrings are being tossed into this litigation.

II. RESPONDENTS ASSERT MISLEADING MATTERS SERVING ONLY TO DISTRACT.

Petitioners respectfully submit that overall, Respondents have not adequately stated good reason for denying the Petition. Misleading statements as "(w)hat is involved here is exclusion by the Nagel Group of particular individuals, *selected by it*, from its property...", Nagel Group Brief at page 8 (emphasis added) or generalities as "(h)ere, the involvement by the police was limited to providing occasional information and advice...sometimes followed... sometimes not...", Brief for City at page 10, do not cut into the concrete record presented in the Petition, especially portions of taped conversations, neither addressed in two previous opinions nor in either of the briefs in opposition,

that yield inescapable conclusion that the City of Champaign Police Department is doing the selecting with the landlord routinely, without thought, placing police selections on the "no-trespass list", joint state action. Other misleading inaccuracies are present, such as innuendo designed to convey the false impression that this case is about "possible unplanned reactions to disturbances", Nagel Group Brief at page 4, City Brief at page 6 (neither brief making any "appropriate references...to the record...", Rule 24.1(g)). Some assertions are false in suggesting that they are part of the record, as in note 7, Nagel Group brief at page 5: "Petitioner assert that one receiving a barred notice is not informed whether he or she has been placed on the "no trespass" list...But a recipient of such a notice who has or receives an invitation from a tenant can have a tenant check on whether the invitee is on the "no trespass" list and, if so, request removal. *Such requests are regularly considered and sometimes granted.*" The underlined, distractive suggestion is inappropriate in a due process, vagueness challenge to a criminal statute or its interpretation; at most, it suggests impermissable language (shifting the burden of notice to a defendant) in addition to that provided by the Supreme Court of Illinois, so that § 21-3(c) would now read: "This Section does not apply...to anyone invited by...(a tenant)...to visit him at the place he is...living... *except where a landlord reserves a provision in the lease the right to bar any person from the property and give notice specified in subsection(a), with the recipient of such a notice being under a duty of inquiry of his invitor whether he is on a "no trespass" list*". The italicized portion, that "*(s)uch requests are regularly considered and sometimes granted...*", is a statement of fact not at all appearing of record.

At page 8 of Respondent Nagel Group's brief, the shopping center case of Lloyd Corp. v. Tanner, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972) is cited for the proposition that "...mere use of a state trespass law to enforce a private landowner's decision to exclude particular individuals does not convert the decision to exclude into state action." The case is distinguishable: In Tanner, "(t)he

handbilling by respondents in the malls of Lloyd Center had no relation to any purpose for which the center was built and being used." 407 U.S. at 564. In this case, the purpose of Parkside and Mansard Square Apartments is to provide homes where people live and have guests in the traditional setting for exercise of First Amendment freeedom of association rights; secondly, had there been an agreement between mall management in Tanner and the local police department, whereby police would select certain groups as undesirable and recommend them to mall management for exclusion, as opposed to a blanket rule prohibiting handbilling, state action would be the appropriate ruling, as it should be in this case.

CONCLUSION

This Court previously has offered critical examination of "sweeping dragnet laws", City of Houston vs. Hill, 482 U.S. 451, 465, 197 S. Ct. 2502, 96 L. Ed. 2d 398, (1987) as is presented by this record. Petitioners submit Respondents state no sound reason for not doing so here and respectfully request issuance of a Writ of Certiorari to the Supreme Court of Illinois.

Respectfully Submitted,



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